

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BRACE KERN & JESSICA HUIGENS, individually and
as the representatives of a class of similarly situated
persons,

CASE NO. 1:16-CV-00008

Plaintiffs,

HON. ROBERT HOLMES BELL

v.

USA TRAVEL SERVICES, VIP TRAVEL SERVICES,
NEWPORT HOSPITALITY, LLC d/b/a NEWPORT
BEACHSIDE HOTEL & RESORT, NEWPORT
VACATIONS, LLC, SUMMER PAY PARTNERSHIP,
d/b/a SUMMER BAY RESORTS, SUMMER BAY
VACATIONS, LC, SUMMER BAY RESORT
CONDOMINIUM ASSOCIATION, INC, SILVER
LAKE RESORT, LTD d/b/a SILVER LAKE RESORT,
SILVER LAKE RESORT OWNERS ASSOCIATION,
INC and THE VILLA GROUP,

Defendants.

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**DEFENDANTS SILVER LAKE RESORT, LTD D/B/A SILVER LAKE RESORT AND
SILVER LAKE RESORT OWNERS ASSOCIATION, INC.'S MOTION TO DISMISS OR
TRANSFER**

NOW COME Defendants, Silver Lake Resort, LTD d/b/a Silver Lake Resort, and Silver
Lake Resort Owners Association, Inc., by and through their attorneys, Smith Haughey Rice &

Roegge, and in support of their Motion to Dismiss or Transfer filed pursuant to Fed. R. Civ. P. 12(b)(2), 12(b)(3), 12(b)(6), and 28 USC 1404(a), state the following:

1. On or about January 7, 2016, Plaintiffs Brace Kern and Jessica Huigens filed this action. There are ten defendants, including the movants here, Silver Lake Resort, LTD d/b/a Silver Lake Resort and Silver Lake Resort Owners Association, Inc. (together the “Silver Lake Defendants”). Plaintiff’s complaint alleges violations of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, *et seq.* See Complaint (Doc. No. 1).

2. Despite alleging violations of the TCPA, Plaintiffs complaint fails to state the phone number where they allegedly received the violative calls. Therefore, Plaintiffs’ complaint must be dismissed pursuant to Fed. R. Civ. P. 12(b)(6), as it fails to state a claim upon which relief can be granted.

3. Further, Plaintiffs’ Complaint alleges that nine of the ten defendants, including the Silver Lake Defendants, are residents of, or are organized under the laws of the State of Florida. The remaining defendant is alleged to be a resident of California. No defendants are alleged to be residents of the State of Michigan, and Plaintiffs’ complaint fails to allege the minimum contacts necessary for jurisdiction to apply. Therefore, Plaintiffs’ complaint must be dismissed pursuant to Fed. R. Civ. P. 12(b)(2) because (i) Michigan does not have jurisdiction over the Silver Lake Defendants under either MCL 600.711, 600.715, 600.721, or MCL 600.725, and/or because (ii) Plaintiffs cannot establish the necessary “minimum contacts” between the Silver Lake Defendants and Michigan to withstand scrutiny under the Due Process Clause analysis which controls.

4. In the alternative, even if this Court has personal jurisdiction over the Silver Lake Defendants, venue in this district is inconvenient. The case should be dismissed pursuant to Fed.

R. Civ. P. 12(b)(3), or transferred to the United States District Court of Florida pursuant to 28 U.S.C. § 1404(a).

5. Pursuant to Local Rule 7.1(d), Counsel for the Silver Lake Defendants attempted to obtain concurrence to this motion. As of the time of filing, Defendants did not receive a definitive response from Plaintiffs as to their position.

6. The Motion will be based on this Motion, Defendants' Brief in Support of the Motion, all of the other papers on file in this action, and such other and further evidence or argument as the Court may allow.

WHEREFORE, Defendants Silver Lake Resort, LTD d/b/a Silver Lake Resort and Silver Lake Resort Owners Association, Inc., respectfully request that this Court grant this Motion and dismiss Plaintiffs' Complaint or, in the alternative, transfer venue to a more convenient forum.

DATED: April 26, 2016

/s/ Christopher M. Spain

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